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December 11, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*; WC Docket No. 01-338

Dear Ms. Dortch:

Yesterday, the undersigned, together with Anjali Joshi, Gerard Stelz and Benjamin Valera of Covad Communications Company (Covad), made an *ex parte* presentation via telephone in the above-referenced docket to Simon Wilkie, Donald Stockdale and William Sharkey in the Office of Plans and Policy. The purpose of the meeting was to discuss Covad's need for non-discriminatory access to the unbundled transport network element.

During the meeting, Covad discussed its almost exclusive reliance on ILEC interoffice transport to connect its central office collocation sites to hub locations and to Covad's long-haul network. Specifically, Covad currently purchases more than 98% of its interoffice DS-1 circuits and more than 95% of its interoffice DS-3 circuits from the ILEC in the relevant central office. Furthermore, to the extent Covad purchases transport from non-ILEC vendors, Covad has no way of knowing how the interoffice transport it purchases from these alternative vendors is actually provisioned. Covad suspects that the transport it purchases from non-ILEC vendors is often provisioned using UNE or special access interoffice transport circuits. In fact, ILEC commenters have failed to produce even a single instance of a competitive facilities-based transport vendor that duplicates ILEC interoffice transport routes using its own transport facilities. In any event, transport circuits purchased from non-ILEC vendors comprise less than 5% of Covad's interoffice DS-3 circuits, and less than 2% of Covad's interoffice DS-1 circuits. Accordingly, Covad remains dependant on the ILECs for its interoffice transport needs.

In addition, Covad discussed its ongoing, and heretofore unsuccessful, attempts to obtain access to UNE dark fiber transport from the ILECs. As Covad's network has grown, so has its need for access to transport at higher capacity levels than DS-3, such as OC-n transport and dark fiber. Covad discussed its attempts to purchase dark fiber from Verizon in three central offices in the New York region, to connect these offices to Covad's hub locations. Each of Covad's attempts to purchase dark fiber from Verizon was met with a rejection for "no facilities." Unfortunately, Verizon continues to follow a policy of not providing maps to requesting carriers showing the availability of dark fiber in Verizon's local exchange networks. This places

requesting carriers in the position of placing dark fiber orders for specific routes, receiving a "no facilities" rejection from Verizon, and then trying again with an order for dark fiber along an alternative route – in effect, guessing through their orders where Verizon's dark fiber facilities are located. Verizon persists with this policy, despite the Wireline Competition Bureau's recent decision in its *Virginia Arbitration Order*.[1] Like other Verizon "no facilities" policies, Verizon's dark fiber policy denies competitors access to unbundled dark fiber under the guise of "no facilities," when in fact there could very well be facilities suitable for the needs of requesting carriers available. After 20 attempted orders (and a few thousand dollars for futile engineering queries), Covad has now given up attempting to order dark fiber from Verizon.

No additional materials were presented during the meeting.

Respectfully submitted,

/s/ Praveen Goyal

Praveen Goyal
Senior Counsel for Government &
Regulatory Affairs

[1] *See Petition of WorldCom, Inc., et al., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, CC Docket Nos. 00-218, 00-249, 00-251, DA No. 02-1731, Memorandum Opinion and Order, at paras. 469-475 (Jul. 17, 2002) (para. 473: " [T]he Commission's rules requiring nondiscriminatory access to UNEs, and specifically to OSS, preclude any requirement by Verizon that AT&T submit multiple inquiries to discover whether fiber is available along each leg of a desired route.").